HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.18968 of 1998

Dated 10th day of August, 2007

Between:

The Mandal Revenue Officer,
Parawada Mandal, Visakhapatnam
District ..
Petitioner

And

Pakki Rajarama Mohan Roy (died)
and 14 others ..
Respondents

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O R D E R:

This writ petition is filed by the Mandal Revenue Officer to quash the judgment dated 12.9.1990 in T.A.No.12/86 delivered by the 5th respondent-District Judge.

The petitioner asserts that the land of an extent of Ac.20.00 cents bearing patta No.7 is known as "Pream Beedu" situated in Mantripalem village which was formerly in the Chemudu Zamindari. On 12.1.1951 the Government took over the Estate which was classified as Poramboke and vested in the Government under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for brevity "Estate Abolition Act"). Respondents 1 to 4 on the one hand, and respondents 14 and 15 on the other, are making conflicting claims that they have been in possession and enjoyment of the land in question since 1930. When respondents 14 and 15 filed a petition under Section 56 (1)(c) of the Estate Abolition Act against respondents 1 to 4 seeking grant of pattas, the Settlement Officer, Visakhapatnam, vide his order dated 29.7.1986, refused to grant pattas to any of the parties. Now, the grievance of the petitioner is that when respondents 1 to 4, aggrieved by the order of the Settlement Officer, filed an appeal, the 5th respondent-District Judge, by his judgment dated 12.8.1990, allowed the appeal declaring them as lawful ryots of the land in question in spite of the fact that the land belongs to the Government.

1st respondent died. Respondents 6 to 13 were added as legal representatives of the deceased-1st respondent.

Respondents 2 to 4 filed counter affidavit stating that as per village land cess statement of 1892, respondents 14 and 15 i.e. Senapathi Appalanaidu and Senapathi Appanna were shown as ryots and in occupation of Zeroiti lands admeasuring Ac.49.20 cents under patta Nos.7 and 12 situated in Mantripalem village of Chemudu Estate. The ancestors of respondents 14 and 15 did not cultivate the total extent of land, failed to pay rent to the Zamindar and surrendered Ac.20.00 cents covered by patta No.7 to the Estate Authorities in the year 1930. Thereafter, the 1st respondent's father late Bhima Rao, approached the Estate Authorities and applied for patta agreeing to pay nazarana and rent to the Zamindar for Ac.20.00 cents. The Estate authorities accepted the offer and after receiving Nazarana and rent, issued a regular lease patta to Bhima Rao on 15.9.1936. Since then, the land was in possession and enjoyment of respondents 1 to 4. On 12.1.1951, the Government took over an extent of Ac.20.00 cents of land under Patta No.7 under the provisions of the Estate Abolition Act. Even afterwards, respondents 1 to 4 continued to be in possession and enjoyment of it till date. This land was resurveyed allotting R.S.No.267. In Adangals, the names of respondents 1 to 4 against the scheduled lands were recorded in 1354 F. Respondents 14 and 15 lost possession of the land in question when their ancestors surrendered the land in favour of Chemudu Estate in the year 1930. Hence, the learned District Judge was right in allowing the claims of respondents 1 to 4 declaring them as lawful ryots on the basis of both oral and documentary evidence.

Respondents 14 and 15 have not filed counter affidavit but a brief note merely stating that since the land is a Government poramboke they are also entitled to seek assignment on par with respondents 1 to 4 and 6 to 13.

The learned Government Pleader for Revenue, appearing for

the petitioner, has contended that the land in question is Government poramboke under the provisions of the Estate Abolition Act and the Estate was taken over by the Government on 12.1.1951. Subsequently, the respondents encroached the land. The claim of respondents 1 to 4 that the Zamindar issued Ex.R4 patta (Cowle) dated 15.9.1936 is not correct because it does not bear the seal of the Estate. The documents on record show that the land was classified as Government poramboke and therefore, neither the respondents 1 to 4 and 6 to 13 nor respondents 14 and 15 are entitled for pattas of the land in question, and the Settlement Officer rightly rejected their claims for declaration as lawful ryots.

Sri A Rangacharyulu, learned counsel for respondents 1 to 4 and 6 to 13 has mainly contended that the ancestors of respondent Nos.14 and 15 left about Ac.20.00 cents of land fallow in the total extent of Ac.49.29 cents in the year 1930. When they did not pay cist to the zamindar for an extent of Ac.20.00 cents, the 1st respondent's father approached Zamindar for assignment of the land in his favour. Then, the Zamindar, after verification, issued proceedings assigning the land to him in Rc.No.306/33. In pursuance of this assignment, the 1st respondent's father paid nazaran and rent for fasli 1345 and 46. Subsequently, Zamindar issued patta No.26-A in favour of the 1st respondent's father. Thereafter, the 1st respondent's father continued to pay cist until Estate was taken over by the Government i.e. on 12.1.1951. Even afterwards, respondents 1 to 4 continued to pay cist to the Government. Inasmuch as the Estate was taken over on 12.1.1951, respondents 14 and 15 have to prove that they were ryots as defined under Section 3(15) of the Estates Land Act, but as per the evidence on record, they abandoned the land in question in the year 1930, and therefore, they were not ryots as on 12.1.1951 for R.S.No.267. The exhibits which were marked on behalf of

respondents 1 to 4 prove that the patta was granted by the Zamindar, nazarana was paid, rent receipts were passed and cist was paid, and therefore, the District Judge was right in declaring them as lawful ryots.

Sri P.Rajasekhar, learned counsel for respondents 14 and 15 has strenuously contended that respondents 14 and 15 i.e. Senapathi people have been in possession of the land in question and a patta was granted to them by the zamindar. When the Estate was taken over by the Government, the lands were resurveyed, but the names of respondents 1 to 4 were recorded in the Adangals erroneously.

There is no dispute with regard to the nature and extent of the land in question. The matter involves valuable property rights and several contentious issues. In this case, the principal claim of the petitioner-Mandal Revenue Officer is that the land in question is a Government poramboke and it was taken over by the Government on 12.1.1951 and neither respondents 1 to 4 nor respondents 14 and 15 have any manner of right over it and they cannot claim to be lawful ryots of it.

This Court, before adjudicating the disputed question of fact arises between the petitioner and the respondents, it is inclined to decide the issue between respondents 1 to 4 and respondents 14 and 15 with regard to the lawful possession.

In the order passed by the Settlement Officer, it is clear that only PW1 i.e. the 14th respondent herein, was examined on behalf of respondents 14 and 15. He categorically admitted that respondents 1 to 4 have been in possession and enjoyment of the land of an extent of Ac.20.00 cents for 40 years. Though it is the contention of the learned counsel for respondents 14 and 15 that respondents 14 and 15 were also in possession of the land, but PW1 nowhere stated in his evidence as such, and there is no documentary evidence to show that they were in possession of the land, they paid cist or they were issued

patta. On the other hand, the evidence of RWs.1 to 3, Exs.R2 and R3, cist receipts and Ex.R4, patta No.26-A, dated15.9.1936 for an extent of Ac.20.00 cents of land issued by the Zamindar to the 1st respondent's father amply prove that the 1st respondent's father was in possession of the land in question. Later, in the family partition, the land fell to the share of the 1st respondent and since then he has been cultivating and enjoying the land by raising dry crops, causurina, eucalyptus, etc. RW2 clearly stated in his evidence that D-form pattas were also granted in favour of respondents1 to 4 at the rate of Ac.05.00 cents each and respondents 14 and 15 never cultivated the land. Further, respondents 1 to 4 in their counter have taken a firm stand that the ancestors of respondents 14 and 15 left about Ac.20.00 cents of land fallow in the total extent of Ac.49.29 cents in the year 1930 and as they did not pay cist to the Zamindar for this extent, the 1st respondent's father occupied the land by paying cist, and the Zamindar after verification, assigned the land to him and subsequently granted patta in his favour. When the father of the 1st respondent died in 1952, respondents 1 to 4 came to be in possession of the land either in family partition or by succession and have been regularly paying cist to the Government. Hence, this Court is of the considered opinion that respondents 1 to 4 are in valid possession and enjoyment of the land in question.

Now, coming to the contention of the learned Government Pleader for Revenue that as the land was taken over by the Government on 12.1.1951, and respondents 1 to 4 and 6 to 15 have no manner of right whatsoever over the land and they must be summarily evicted from it, this Court is of the view that though the Government took over the land in question on 12.1.1951, when the 1st respondent requested the District Collector not to evict them, he issued D-Form pattas for Ac.05.00 cents each to respondents 1 to 4. Further, merely

because the Government took over the land in question, it cannot be held that respondents 1 to 4 are not the lawful ryots inasmuch as Section 6 of the A.P. (Andhra Area) Estates Land Act, 1908 contemplates that "subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the Estate of such landholder shall have a permanent right of occupancy in his holding. Explanation 4(1) of Section 6 of this Act postulates thus:

> **"Every landholder who receives or recovers any payment under Section 163 from any person unauthorizedly occupying ryoti land shall be deemed to have thereby admitted such person into possession unless within two years from the date of receipt of recovery of payment or the first of such payments, if more than one, he shall file a suit in a Civil Court for ejectment against such person."**

This Explanation can exactly be made applicable to the facts of the case on hand. No doubt, the land in question is a ryoti land. Initially, the Zamindar of the Estate can be termed as landholder because he received or recovered all kinds of payments, such as cist, etc. from respondents 1 to 4, but later, when the Government took over the land on 12.1.1951, for all practical purposes, the Government itself has become the landholder because when D-Form pattas were granted to respondents 1 to 4 naturally, the Government receives or recovers any kind of payment from them in relation to the land in question. Now, it is to be noticed that when the Government, within two years from the date of receipt or recovery of any payments from the respondents fails to file a suit in a Civil Court for ejection of respondents 1 to 4, then the Government shall be deemed to have thereby admitted respondents 1 to 4 into possession. As could be seen from the material placed on record, neither the Government has approached the Civil Court for ejection of the respondents nor the learned Government Pleader has contended as such. In addition to that the petitioner-Mandal Revenue

Officer, except stating that the land in question is Government poramboke, he nowhere denied or contradicted that respondents 1 to 4 are not in possession of the land. So, when the petitioner has utterly contravened the proviso, he cannot claim that the land belongs to the Government. However, the learned Government Pleader, in order to buttress his contention, has drawn my attention to some of the judgments, but they have no relevancy at all to the subject matter of this writ petition. Hence, in terms of Explanation 4(1) of Section 6 of Andhra Pradesh (Andhra Area) Estates Land Act, 1908, it is manifest that respondents 1 to 4 are deemed to have been admitted by the Government that they are in possession of the land in question. Therefore, the contention of the learned Government Pleader that the land belongs to the Government and respondents 1 to 4 and 6 to 13 are to be evicted from it is wholly unsustainable.

For the foregoing reasons, this Court has no hesitation to hold that the 5th respondent-District Judge is perfectly justified in holding that respondents 1 to 4 are the lawful ryots of the property in question.

In the light of the established fact that respondents 1 to 4 are the lawful ryots of Ac.20.00 cents of land, the well-considered order dated 12.9.1990 passed by the 5th respondent-District Judge does not suffer from any legal infirmities and cannot be interfered with.

Hence, the writ petition fails and is dismissed. No costs.

10.08.2007
bcj